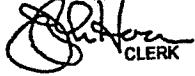


1 Robert Eugene Hybertson
2 8035 Blackhawk Road
3 Black Hawk, SD 57718

FILED

MAY 20 2015


Clerk

8 IN THE DISTRICT COURT OF THE UNITED STATES
9 DISTRICT OF SOUTH DAKOTA

10 At Rapid City

11 Robert Eugene Hybertson, Christopher Rhodes) No. 15-5040
12 Chapman, Charles Sorensen, Robert Orth, and)
13 Timothy Taylor,) CIVIL COMPLAINT TO review agency
14 Plaintiffs, *pro se*,) wrongdoing - 5 USC § 701-706.
15)
16)
17) VERIFIED CIVIL COMPLAINT
18 vs.)
19)
20)
21 UNITED STATES, DEPARTMENT OF)
22 TREASURY, and INTERNAL REVENUE)
23 SERVICE, and IRS C.I.D. Agent GREG)
24 M. FLYNN,)
25 DEFENDANTS.)

26 I. INTRODUCTION, JURISDICTION, and VENUE.

27 1.1 COMES NOW, the above named Plaintiffs, seeking specific relief in the form of
28 review of agency action done in defiance of law, in excess of statutory scope of authority, and
in violation of the United States Constitution. Under the facts of this case it is proven that
actual, concrete harm to personal rights to privacy, property and liberty is imminent or has
already occurred. Causes of action and relief sought are at ¶ 3.1 through ¶ 3.33.

1 1.2 Attached hereto is the Plaintiffs' First Mandatory Judicial Notice and Offer of Proof
2 with exhibits, which are incorporated by this reference as if fully restated herein. Pages of the
3 entire Notice and exhibits are numbered in one sequence on the upper right hand corner (Pages
4 1 through 357). *Any and all emphasis* employed herein shall be construed to have been added.
5 As used herein the term "OP1" shall be deemed to refer to the attached Mandatory Judicial
6 Notice and Offer of Proof with its exhibits. The Notice contains a table of contents and list of
7 the exhibits referenced by OP1 page numbers. Exhibits are as follows:

8 **First Offer of Proof contains:**

9 OP1 pages 1 through 3 is: Mandatory judicial notice and offer of proof which includes a
10 detailed list of contents of this entire exhibit.

11 OP1 pages 4 through 183 is: Dec. 28, 2005 complaint to Congress containing briefing
12 statutory claims over which review is hereby sought.

13 OP1 pages 184 through 308 is: 1st supplemental briefing filed Aug. 27, 2014 in support
14 of complaint at OP1 pp. 4 through 183.

15 OP1 pages 309 through 318 is: 2nd supplemental briefing filed Feb. 25, 2015 in support
16 of complaint at OP1 pp. 4 through 183.

17 OP1 pages 319 through 330 is: Plaintiff Robert Hyberston's March 9, 2015 affidavit of
18 joinder with exhibits filed to join the Dec. 28, 2006 criminal complaint to Congress,
19 above, as a similarly situated witness to crime.

20 OP1 pages 331 through 337 is: Plaintiff Chris Chapman's May 25, 2006 affidavit of
21 joinder filed to join the Dec. 28, 2006 criminal complaint to Congress, above, as a
22 similarly situated witness to crime.

23 OP1 pages 338 through 349 is: Plaintiff Robert Orth's December 2, 2014 affidavit of
24 joinder filed to join the Dec. 28, 2006 criminal complaint to Congress, above, as a
25 similarly situated witness to crime.

26 OP1 pages 350 through 357 is: Plaintiff Charles Sorensen's May 13, 2015 affidavit of
27 joinder filed to join the Dec. 28, 2006 criminal complaint to Congress, above, as a
28 similarly situated witness to crime.

29 1.3 The Internal Revenue Service (hereinafter "IRS") is a bureau within the US
30 Department of the Treasury. (See 26 CFR 601.101). The US Treasury is in a position of
31 oversight in relation to the IRS and the enforcement of the provisions of 26 USC. (See 26 USC
32

1 §§ 7801, 7805). The Secretary of the Treasury must have express permission to operate outside
2 of Washington, D.C.. (See 4 USC § 72). In relation to this role, the Secretary of the Treasury
3 answers to the Joint Committee on Taxation, in Congress. (See 26 USC § 8022). As used
4 herein the term “Defendant” shall be construed to mean and include the IRS, the Department of
5 Treasury, and the United States federal government.

6 1.4 All conduct on the part of the Defendants complained of herein was, is, or will be in
7 excess of statutory authority and official right. Defendants’ past, present, and threatened actions
8 are 1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, 2)
9 contrary to constitutional right, power, privilege, or immunity, 3) in excess of statutory
10 jurisdiction, authority, or limitations, or short of statutory right, and 4) without observance of
procedure required by law.

11 1.5 The statutory scheme at 26 USC is a behemoth of the Defendants’ making, and has
12 been the basis for untold harassment of the American public for decades. This probe into its
13 provisions will evoke sharp and lengthy diatribe from the Defendants but the Court will readily
14 see that Defendants’ rebuttal at all times lacks substance and adherence to canons of statutory
15 interpretation and tenets of due process. The provisions relevant to the review hereby sought
16 are those which the Defendants readily wield or cite as relevant when acting against
17 Americans, but when pressed about the language of said provisions the Defendants employ
evasion and deploy retaliatory measures to stifle all challenges.

18 1.6 Plaintiff Robert Eugene Hybertson is under threats issued by the Defendants in this
19 judicial district. Plaintiffs outside of this judicial district waive venue and join in this action for
20 review.

21 1.7 Defendants demand and collect from Americans deemed to be “citizens of the
22 United States,” including parties Plaintiff to this action, sums Defendants claim are imposed as
23 income taxes under 26 USC chapter 1 (§ 1 graduated income tax on taxable income and capital
24 gains), chapter 2 (Social Security self employed), chapter 21 (Social Security employee FICA
25 or “payroll tax”), and chapter 23 (Federal Unemployment Tax Act, excise on employers of the
citizen in § 3306(j)) of 26 USC.

26 1.8 This action arises under the 4th and 5th Amendments to the United States
27 Constitution. Review and relief sought herein is provided for as a matter of right to due process,
28 and under 5 USC §§ 701-706. This Court has jurisdiction and venue is proper.

II. FACTS & PARTIES.

Plaintiff Robert Hybertson:

2.1 Plaintiff Robert Eugene Hybertson has as his address for the purposes of this action 8035 Blackhawk Road, Black Hawk, SD 57718. He has recently received threatening correspondence from the Defendant GREG M. FLYNN which alludes to criminal prosecution when, in fact, the Defendant has refused for many years to go on record with an interpretation of its own governing statutes and regulations relied upon in this action. As recently as May 8, 2015, an associate of this Plaintiff was contacted in person and was quizzed for facts relative to him and his affairs.

Plaintiff Chris Chapman:

2.2 Plaintiff Christopher Chapman has as his address for the purposes of this action 3080 Finsterwald Drive, Titusville, FL 32780. In January of 2007 Mr. Chapman appeared under subpoena before a grand jury convened by the Defendant for suspicion of violations of 26 USC. Mr. Chapman served the grand jury and the Department of Justice's counsel with a complaint to Congress filed Dec. 28, 2005 which contained a briefing of certain conclusions relating to *in personam* jurisdiction under 26 USC in relation to citizens of the United States and never heard back from either the grand jury or the Dept. of Justice since.

Plaintiff Robert Orth:

2.3 Plaintiff Robert Orth has as his address 7207 Lafayette Road, Indianapolis, IN 46278-1503. Mr. Orth has recently received correspondence from the Defendant (the IRS) who has not considered all relevant statutes in its conclusion that he allegedly owes sums imposed under 26 USC, and has threatened Mr. Orth with criminal charges.

Plaintiff Charles Sorensen:

2.4 Plaintiff Charles Sorensen has as his address for the purposes of this action 7423
Frontier Trail, Chanhassen, MN 55317. This Plaintiff is an employee for a large corporation
but risks his employment at any time if he were to enquire as to how his employer's payroll
department interprets and applies the provisions of 26 USC.

1 **Plaintiff Timothy Taylor:**

2 2.5 Plaintiff Timothy E. Taylor has as his address for the purposes of this action P.O.
3 Box 472, Fort Lupton, Colorado 80621. On or about August 14, 2014 Mr. Taylor's bank
4 account was drained by the Defendants (the IRS) without prior notice or protocol required to
5 predicate a levy.

6 **Defendant(s):**

7 2.6 Defendant UNITED STATES has as its address Office of the Attorney General,
8 Department of Justice 10th & Pennsylvania Ave., N.W., Washington, D.C. 20530 and U.S.
9 Attorney's Office PO Box 2638, Sioux Falls, SD 57101-2638. Defendant, by and through its
10 Department of Treasury, and the bureau thereof (the IRS), has caused these Plaintiffs undue
11 stress and loss of property through threat, duress, and coercion, going so far as to seek criminal
12 charges and convictions with the object being to deprive Plaintiffs of their liberty.

13 2.7 Defendant GREG M. FLYNN is employed by Defendant UNITED STATES as an
14 Internal Revenue Service C.I.D. Agent in Denver, Colorado, and has as his address 1999
15 Broadway 27th Floor, Denver, CO 80202.

16 III. CAUSES OF ACTION.

17 3.1 All facts alleged in ¶¶ 2.1 through 2.7 shall be deemed incorporated into each of the
18 following paragraphs. Plaintiffs and each of them have been wronged by agency action through
19 conduct that violates rights to due process, are arbitrary and capricious, are in excess of
20 statutory authority and scope, are not in accordance with law, and are without observance of
21 procedure(s) required by law.

22 5 USC § 706 Scope of review.- To the extent necessary to decision and when presented,
23 the reviewing court shall decide all relevant questions of law, interpret constitutional
24 and statutory provisions, and determine the meaning or applicability of the terms of an
25 agency action. The reviewing court shall-

26 (1) compel agency action unlawfully withheld or unreasonably delayed; and
27 (2) hold unlawful and set aside agency action, findings, and conclusions found to
28 be-
 (A) *arbitrary, capricious, an abuse of discretion, or otherwise not in accordance*
 with law;
 (B) *contrary to constitutional right, power, privilege, or immunity;*

- (C) *in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;*
- (D) *without observance of procedure required by law;*
- (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or
- (F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

3.2 Defendant will cite as a jurisdictional bar to further proceedings 26 USC § 7421 which prohibits maintaining any action seeking to inhibit or obstruct the assessment or collection of “taxes.”

26 U.S. Code § 7421 - Prohibition of suits to restrain assessment or collection.-

(a) Tax.- Except as provided in sections 6015 (e), 6212 (a) and (c), 6213(a), 6225(b), 6246(b), 6330(e)(1), 6331(i), 6672(c), 6694(c), and 7426(a) and (b)(1), 7429(b), and 7436, ***no suit for the purpose of restraining the assessment or collection of any tax shall be maintained*** in any court by any person, whether or not such person is the person against whom such tax was assessed.

3.3 What Defendant cannot prove with such an argument is that the amounts it maintains are those owed by the Defendants are a “tax” or that the assessment of such is lawful conduct; 26 USC § 7421 is a false shield. Without a lawful basis, the collection and assessment of the amounts sought by the Defendant are plain violations of the law. (See 26 USC § 7214; 18 USC §§ 241, 872, 1341, 1962(c) and (d), other). The unlawful assessment of taxes, and the collection of amounts resulting from mere exactions of liabilities, can hardly be what Congress sought to protect through its enactment of 26 USC § 7421. (See 26 CFR 601.106(f)(1) (“Rule 1. An exaction by the U.S. Government, which is not based upon law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the U.S. Constitution”)). Without clear proof that the law imposes the amounts sought, and that assessment authority applies to the taxes allegedly imposed, § 7421 is wholly irrelevant and thus provides no safe harbor for the Defendant.

111

FIRST CAUSE OF ACTION.

1. Regulation alone (OP1 pp.93 to 96).

3.4 As it relates to 26 USC, Defendant maintains that all Americans, Plaintiffs included, are “citizens of the United States” as defined in 26 CFR 1.1-1. (“Any person born or naturalized in the United States and subject to its jurisdiction”). Individuals of this citizenship are expressly excluded from the definition of “citizen” identified in statutes relating to Social Security taxes and administration. (See 26 USC §§ 1402(b), 3121(e), and 3306(j); 42 USC § 411(b)(2); Social Security Act of 1935, P.L. 74-271, 49 Stat. 620 § 211, enacted August 14, 1935, now codified as 42 U.S.C. ch.7). Social Security taxes are to be collected in the US Possessions. (See 26 USC § 7655). The statutory predecessor of 26 USC chapters 2 and 21 (Social Security) is § 3811 of the 1939 tax Code. (See 26 USC § 7651(4)(A)).

3.5 Now, with 26 USC chapters 2, 21, and 23 proven inapplicable to “citizens of the United States,” only chapter 1 is left, with its graduated income tax and relevant brackets. (See 26 USC § 1). Chapter 1 contains no statutory definition of the term “citizen,” so the Defendant promulgated 26 CFR 1.1-1 to serve as the provision making “citizens of the United States” subject to chapter 1. Treasury Regulation 26 CFR 1.1-1 is an undue addition to 26 USC § 1 and stands in violation of the 16th Amdt. to the U.S. Constitution that authorizes only Congress to lay and collect income taxes. Nowhere in 26 USC § 1 is any individual’s citizenship referenced in any way. The chapter 1 tax on gross income is relevant to Americans solely due to the promulgation of 26 CFR 1.1-1.

3.6 Defendant maintains that it is frivolous for an American to claim “non-resident alien” status in relation to Washington, D.C. yet, when faced with the challenge to this regulation as an invalid enhancement to 26 USC § 1, they argue and hold that the claim that one is a “citizen of the United States” is a claim of “non-resident alien” status in relation to Washington, D.C.; this is ludicrous. In another instance Defendant was unable to reference the provisions relied upon and cited authorities relevant only to assessment authority under 26 USC § 6201, which has nothing to do with the *imposition* of taxes.

Relief:

3.7 Plaintiffs seek this Court's determination that 26 CFR 1.1-1 deviates from 26 USC § 1 and is therefore arbitrary and an abuse of discretion, that it violates due process rights of the

1 Plaintiffs, that it is in excess of statutory jurisdiction and authority, that it is in excess of
2 statutory limitations and short of statutory right, and that it was promulgated without
3 observance of procedure required by law.

4 SECOND CAUSE OF ACTION.

5 2. All property is a cost (OP1 pp.100 to 110).

6 3.8 The 26 USC provision that “explains how property received in exchange for
7 services is taxed” is off limits, the Defendant will not discuss it, the courts will not rule upon its
8 operation, the Internal Revenue Service does not train on it, and in the administration of laws of
9 the United States said statute is never considered or allowed to operate in any way, in relation
10 to compensation for services actually performed. (See 26 USC § 83(a)).

11 3.9 While 26 USC § 83(a) governs what is to be included in gross income in 26 USC §
12 61(a), the Defendant begins every “determination” by including all compensation for services
13 in § 61(a) and refuses to consider § 83(a) or to allow it to operate, stifling all protests and
14 claims with monetary sanctions and libelous diatribe to stigmatize all who perceive protections
in § 83(a) and its implementing regulations.

15 3.10 In only one case, in 1996, has the Defendant articulated an interpretation of 83(a)
16 but did so without reference to the specific language of the implementing regulations or statute
17 adopted by reference. Defendant sets forth a *policy* of excluding the value of personal services
18 from cost for the mere fact that an individual does not purchase their services before selling
19 them to an employer or customer, and therefore reaps only *profit or gain* when receiving the
20 fair market value of such services as compensation.

21 3.11 HOWEVER, this standard is not based upon law and occurs under applicable
22 provisions that clearly and unequivocally state that any money or property is to be treated as an
23 “amount paid” under § 83(a). The Defendant has won four Supreme Court cases arguing
against such an *arbitrary exclusion* yet, in tax cases, insists such an exclusion is permissible.

24 3.12 The Defendant’s refusal to apply § 83(a) constitutes a violation of 26 USC §§
25 83(a), 212, 1001, 1011, and 1012 which together operate to defined and determine what is and
26 is not income (gain or gross income) as well as what is cost when personal services are
27 exchanged for compensation in amounts rightfully deemed to be the fair market value of such
28 services.

Relief:

3.13 Plaintiffs seek this Court's determination that the Defendants' refusal or failure to apply or train on how to fully comply with and apply 26 USC § 83(a) to compensation paid for services actually performed is an abuse of discretion, that it violates due process rights of the Plaintiffs, that including the value of personal services in gross income is in excess of statutory jurisdiction and authority, that it is in excess of statutory limitations and short of statutory right, and that such inclusion in gross income is without observance of procedure required by law.

THIRD CAUSE OF ACTION.

3. Assessment authority (OP1 pp.111 to 113).

3.14 The Defendant's assessment authority, as it relates to income taxes, is provided for under 26 USC § 6201(a). Under § 6201(a) and its predecessor 1939 Tax Code § 3640, assessment authority is limited to taxes "which have not been duly paid by stamp at the time and in the manner provided by law." Stamp taxes are provided from in 26 USC §§ 4300 and 4400s (foreign insurers and casinos).

3.15 Defendant acted to dispose of this obvious constraint on its assessment authority through the promulgation of 26 CFR 301.6201-1(a) which broadened such authority to embrace "all taxes imposed by the 1954 Code and amendments thereto."

Relief:

3.16 Plaintiffs seek this Court's determination that 26 CFR 301.6201-1(a) deviates from and unduly broadens assessment authority from that provided for under 26 USC § 6201, and that its promulgation is therefore arbitrary and an abuse of discretion, that it violates due process rights of the Plaintiffs, that it is in excess of statutory jurisdiction and authority, that it is in excess of statutory limitations and short of statutory right, and that it was promulgated without observance of procedure required by law.

FOURTH CAUSE OF ACTION.

4. "Person" § 7343 not an inclusion (OP1 pp.113 to 115).

3.17 Among the Plaintiffs are those with identical taxing status (self employed) threatened with criminal charges, and subpoenaed to appear before a tax grand jury.

1 Controversies in each instance arise, under 26 USC chapter 75, from alleged receipt of gross
2 income, and not from such Plaintiffs being an officer, employee, or member of a corporation or
3 partnership. The definition of the term “person” in 26 USC § 7343 is viewed by the Plaintiff as
4 an inclusion instead, when the individual of ordinary intelligence cannot surmise any such
intent on the part of Congress upon his or her reading of the statute.
5

6 **Relief:**

7 3.18 Plaintiffs seek this Court’s determination that 26 USC § 7343 is a “definition” and
8 that it is not an “inclusion,” and that said statute limits applicability of 26 USC ch.75 to those
9 specifically named or implicated by its terms. Further, Plaintiffs seek a determination that,
10 because they, as individuals whose purported duties do not arise from being officers,
11 employees, or members of a partnership or corporation, 26 USC ch.75 does not apply to them,
12 and that any application of said chapter to them is arbitrary and an abuse of discretion, that it
13 violates due process rights of the Plaintiffs, that it is in excess of statutory jurisdiction and
14 authority, that it is in excess of statutory limitations and short of statutory right, and that such
application would be without observance of procedure required by law.

15 FIFTH CAUSE OF ACTION.
16

17 5. Seizure w/o due process.

18 3.19 In the instance of Plaintiff Timothy Taylor, the Defendants (IRS) compelled the
bank at which he had an account to remit to the Defendants the entire contents of the account
19 which made it difficult, if not impossible, to maintain his business and continue to derive
compensation for his services as a self employed individual. This seizure was made without
20 any prior notice, notice of levy, notice of deficiency, or demand for payment having ever been
21 made of Mr. Taylor by the IRS. This conduct on the part of the Defendants not only offends 26
22 USC § 6213, but it also flies in the face of clearly established rights to notice and opportunity
23 to appear and defend (due process).
24

25 **Relief:**

26 3.20 Plaintiffs seek this Court’s determination that any seizure of property which does
not allow for the prior opportunity to appear and defend violates due process, that it constitutes
27 an unreasonable seizure, and that such is the case without regard for any statute that seeks to
28

1 authorize such a seizure of property. Plaintiffs seek this Court's determination that any such
2 seizure is or would be arbitrary and an abuse of discretion, that it violates 4th and 5th Amdt.
3 rights of the Plaintiffs, that it is in excess of statutory jurisdiction and authority, that it is in
4 excess of statutory limitations and short of statutory right, and that such application would be
5 without observance of procedure required by law.

6 **SIXTH CAUSE OF ACTION.**

7 6. "Sovereign citizen"

8 3.21 Anyone who seeks to report violations of the laws of the United States will be
9 slandered and libeled by the Defendant. Any such whistle blowing earns the complainant the
10 label of "sovereign citizen" (whatever that is), "tax protestor / defier," or some other label
11 intended to stigmatize and prejudice them as inherently anti-government. Defendant refers to
12 the 18 USC § 4 felony complaint to Congress filed Dec. 28, 2005 (attached) as
13 "Correspondence including documents purporting to be part of a legal case joined by
14 DIMARTINO accusing IRS Special Agents and an Assistant United States Attorney, among
15 others, of criminal misconduct." (See *United States v. DiMartino*, #3:14-cr-175-AWT, in US
16 Dist. Court, D. of Connecticut, indictment filed Aug. 14, 2014 at p.4). This filing on the part of
17 that criminal defendant is listed in the indictment as one indicative of the corrupt endeavor to
18 obstruct the IRS under a charge there alleging a violation of 26 USC § 7212. This is the price of
19 compliance with 18 USC § 4 which requires one to *blow the whistle* on corruption and
felonious misconduct of any type or kind.

20 3.22 Anyone who contradicts the Defendant about any IRS act or conduct is branded a
21 tax protestor or tax defier when, in fact, the Defendant cannot prove that governing provisions
22 have operated or that the law (26 USC provisions, statutes) actually reaches the citizen of the
23 United States. Defendants (Sec. of Treasury, IRS Commissioner, Committee on Joint Taxation,
24 Committee on Government reform, House Judiciary Committee) have had since Jan. 1, 2006
(nine years) to rebut the briefed claims in that complaint to Congress but have failed.

25 3.23 When faced with the challenge that citizens of the United States are implicated
26 under 26 USC § 1 solely through the promulgation of 26 CFR 1.1-1 the Defendant argues that
27 anyone claiming to be a citizen of the United States is claiming to be a non-resident alien, and
28 that such a claim is "frivolous." (See OP1 pp.193 to 216).

1 3.24 While Congress, through the Administrative Procedures Act (5 USC §§ 701-706),
2 provides for review of statutory claims, the Defendant's taxing and prosecutorial authorities
3 lash out against anyone seeking such relief, as it relates to the conduct of the IRS. Congress
4 views holding the government to the letter of the law to be the thing to do, while the courts and
5 the Dept. of Justice revile anyone seeking to do so. While the courts proclaim in volumes that
6 statute is of primary import and that the role of the courts is to stand between parties with
7 differing interpretations of statute and to sort out the language used therein, the same courts
8 refuse to perform such a task in relation to the provisions relied upon in the Memorandum at
9 OP1 pp. 93 to 114. Indeed, any attempt to get the courts to do as promised earns a tirade of
epithets, demeaning diatribe, and hasty evasion; the courts belong to the IRS.

10 3.25 COMPARE *Strom v. US*, 641 F. 3d 1051 (CA9 2011) (full indulgence of 26 CFR
11 1.83 regulations) to *Baker v. CIR*, 70 T.C.M. 1018 (1995) (T.C. Memo. 1995-495). The former
12 concerns 26 USC § 83 and the regulations thereunder as they relate to 26 CFR 1.83-7. Much is
13 made of the language and operation of the regulations, under § 83, and they are relied upon to
14 dispose of the controversy. The latter, however, is a case where an individual sought to apply §
15 83 to the average paycheck, fee, commission, or self employment earnings. Diatribe and
16 demeaning degradation is readily dispensed upon the petitioner in that case and the decision
17 was void of any discussion of the language of § 83, and of 26 CFR 1.83-3(g), 1.83-4(b)(2), and
§§ 1001, 1011, and 1012 and the regulations thereunder.

18 **Relief:**

19 3.26 Plaintiffs seek this Court's determination that their claims or assertions that the
20 Defendants are acting contrary to statutory provisions through any purported authority are not
21 rightfully used to classify them as "sovereign citizens" but rather and more appropriately make
22 them "whistleblowers." Plaintiffs seek a determination that the nebulous pejorative of
23 "sovereign citizen" and its use by the Defendants to disparage and stigmatize the Plaintiffs is or
24 would be arbitrary and an abuse of discretion, that it violates due process rights of the
25 Plaintiffs, that it is in excess of statutory jurisdiction and authority, that it is in excess of
26 statutory limitations and short of statutory right, and that such mischaracterization, libel, or
27 slander would be without observance of procedure required by law.

SEVENTH CAUSE OF ACTION.

7. Void for vagueness (OP1 pp. 89 to 92).

3.27 Albert Einstein said, "The hardest thing in the world to understand is the income tax." (See <http://www.irs.gov/uac/Tax-Quotes>). Plaintiffs contend that evasion of any, much less many, key provisions perceived by any person as those which offer protection of property, privacy, or liberty, or perceived as a constraint on government authority, offends the right to be governed or taxed by laws they can understand (due process). This conduct over the past many decades has separated the average American from the will of their elected representatives (Congress) and has placed control of the purse into the hands of the executive and the judicial branches, and this constitutes an outright usurpation of the principle of taxation with representation.

3.28 For the reasons stated herein, Plaintiffs do not believe for one moment that they have any of the least of duties provided for under 26 USC, that 26 USC imposes any taxes upon them or their compensation for personal actually performed or their capital gains, that they have any duty to file income tax returns, or that criminal sanctions in 26 USC apply to them. In the absence of Defendants' clear and cogent briefing and interpretation of the provisions relied upon by the Plaintiffs, they lack access to the law and can therefore rely upon the interpretation included in this filing.

Relief:

3.29 Plaintiffs seek this Court's determination that Defendants repeated refusal or failure to provide an interpretation of provisions relied upon by the Plaintiff's renders the enforcement of 26 USC against them or their property a violation of the void for vagueness doctrine and their due process rights.

EIGHTH CAUSE OF ACTION.

8. Willfulness (OP1 pp. 121 to 122).

3.30 Plaintiffs have expressed their belief that statute does not reach them or their activities, as it relates to 26 USC, and they have provided proof that the Defendants are evasive and contradictory when confronted over the language of key provisions that govern their enforcement of 26 USC.

1 “*The defendant is also charged in the Indictment with four counts of Willful*
2 *Failure to File an Income Tax Return, in violation of Title 26, United States Code,*
3 *Section 7203. In order for the defendant to be found guilty of that charge, ***the****
government must prove each of the following elements beyond a reasonable doubt:

4 ‘First, ***the defendant was required to file a return for the calendar year*** ending
5 December 31, 2009, 2010, 2011, and 2012; Second, the defendant failed to file an
6 income tax return by the due date ***as required by Title 26*** of the United States Code; and
7 Third, in failing to do so, the defendant acted willfully.’

8 Ninth Circuit Model Criminal Jury Instruction 9.38.

9 In order to prove that the defendant acted “willfully,” ***the government must***
10 ***prove beyond a reasonable doubt that the defendant knew federal tax law***
11 ***imposed a duty on him, and the defendant intentionally and voluntarily violated***
12 ***that duty.***

13 ***A defendant who acts on a good faith misunderstanding as to the***
14 ***requirements of the law does not act willfully*** even if his understanding of the law
15 is wrong or unreasonable. Nevertheless, merely disagreeing with the law does not
constitute a good faith misunderstanding of the law because all persons have a duty
to obey the law whether or not they agree with it. ***Thus, in order to prove that the***
defendant acted willfully, the government must prove beyond a reasonable doubt
that the defendant did not have a good faith belief that he was complying with
the law.

16 Ninth Circuit Model Criminal Jury Instruction 9.42.

17 Sections 7203 and 7206 of the Internal Revenue Code use the term “willfully.”
18 In *Cheek v. United States*, 498 U.S. 192, 201 (1991), the Supreme Court set forth the
19 following definition: “Willfulness, as construed by our prior decisions in criminal tax
20 cases, ***requires the Government to prove that the law imposed a duty on the defendant***,
21 that the defendant knew of this duty, and that he voluntarily and intentionally violated
22 that duty.” This same definition applies equally to all tax offenses, misdemeanors and
23 felonies alike. *United States v. Pomponio*, 429 U.S. 10, 12 (1976) (citing *United States*
24 v. *Bishop*, 412 U.S. 346, 359–60 (1973)). “In other words, ***if you know that you owe***
25 ***taxes*** and you do not pay them, you have acted willfully.” *United States v. Easterday*,
564 F.3d 1004, 1006 (9th Cir.2009). In a failure to file tax return prosecution, the
government is not required to prove an intent to evade or defeat a tax, but ***may instead***
prove an intent to disobey or disregard the law, which may be the intent not to file a
return, rather than the intent to evade or defeat a tax. *United States v. Meredith*, 685
F.3d 814, 826 (9th Cir.2012).

26 A defendant’s views regarding the validity of a tax statute is irrelevant to the
27 issue of willfulness and, if heard, the jury should be instructed to disregard such views.
28 *Cheek*, 498 U.S. at 202. See also *United States v. Powell*, 955 F.2d 1206, 1212 (9th
Cir.1992) (no plain error to instruct that “mere disagreement with the law, in and of

1 itself, does not constitute good faith misunderstanding under the requirements of law
2 [b]ecause it is the duty of all persons to obey the law whether or not they [agree with
3 it].") Willfulness is a state of mind that may be established by evidence of fraudulent
4 acts. *United States v. Voorhies*, 658 F.2d 710, 715 (9th Cir.1981); *United States v.*
Conforte, 624 F.2d 869, 875 (9th Cir.1980)."

5 See Defendants' trial memorandum in *US v. James R. Back*, #3:14-cr-00020-RRB, Anchorage,
6 AK doc.77 filed Sept. 22, 2014.

7 3.31 Plaintiffs have proven that Americans have never owed an income tax under 26
8 USC ch.2, 21, or 23, and that 26 CFR 1.1-1 alone implicates "citizens of the United States" as
9 owing under 26 USC ch.1. Plaintiffs have proven that provisions that define cost or an "amount
10 paid" are not applied by the Defendants in the instance of calculating income taxes relative to
11 compensation for services actually performed. Plaintiffs have proven that an arm's length
12 transaction for personal services yields no gross income under 26 USC § 61(a) when only the
13 contract value or fair market value of the services is paid to one who performed the services.
14 Plaintiffs have proven that 26 USC § 7343 is impermissibly interpreted as an *inclusion* instead
15 of as a *definition* as intended, that it is inapplicable to the Plaintiffs.

16 3.32 It violates Plaintiffs' rights to due process to have to guess as to the meaning of the
17 law and to wonder if the Defendants will seek criminal charges while keeping the operation of
18 the law a secret.

19 **Relief:**

20 3.33 Plaintiffs seek this Court's determination that all times when failing to file or to
21 pay sums purportedly imposed by 26 USC, the Plaintiffs do not act *willfully*, as it relates to 26
22 USC ch.75, that viewing them as willful is arbitrary and is an abuse of discretion, that it
23 violates due process rights of the Plaintiffs, that it is in excess of statutory jurisdiction and
24 authority, that it is in excess of statutory limitations and short of statutory right, and that such
25 application would be without observance of procedure required by law.

26 IV. HISTORY.

27 4.1 Defendants know of, and have been faced with, the statutory issues raised herein
28 many times. (See OP1 at pp.26 to 30; 77 to 78; 188 to 233). Even a criminal complaint to three
congressional committees in Dec. 2005 has proven insufficient to compel the Defendants to

1 disclose their interpretation of the law. The Secretary of the Treasury, IRS Commissioner, and
2 US Attorney General were served their respective copies of said complaint in its entirety but
3 they, too, remain silent in kind. The source of jurisdiction and statutory authority is a secret as a
4 matter of policy, which forces all Americans to guess as to the meaning of the law and forces
5 them to simply trust the executive and judicial branches to obey the law without reference to
6 the law; taxation without representation.

7 4.2 In *US v. Arant* (See OP1 at pp.189 at #4; 194 at ¶ 2.8) the court cited cases about
8 assessment authority when the Defendant was challenged over how 26 CFR 1.1-1 is the only
9 source of the IRS' authority to *impose* chapter 1 income taxes, which would lead one to believe
10 that an assessment imposes a liability, and not §§ 1, 1401, 3101, and 3301. This was clearly
11 evasion of the argument, for federal courts have unanimously held that 26 CFR 1.1-1 is the
12 source of authority to impose § 1 incomes taxes on "citizens of the United States." (See OP1 at
13 pp.208 at ¶ 2.36 to p.214). With all those decisions upon which to draw, the *Arant* court cited
none of them.

14 4.3 In *US v. Werner* (See OP1 at p.195 at ¶ 2.9) the Defendant argued, and the court
15 agreed, that a claim that one is a "citizen of the United States" is a claim that one is a non-
16 resident alien to Washington, D.C., which is a frivolous claim according to all of those
17 decisions where 26 CFR 1.1-1 was cited as an authority. It is frivolous for a "citizen of the
18 United States" to claim to be a non-resident alien, but claiming to be a "citizen of the United
19 States" is claiming to be a non-resident alien, which is frivolous. The Defendants have
apparently said to Americans:

20 "You are a citizen of the United States because you are an American living in one of the
21 fifty freely associated compact states, which makes you a non-resident alien. If you
22 claim to be a non-resident alien you'll be penalized for frivolous tax return or US Tax
23 Court petition (See 26 USC §§ 6702, 6673), and you might go to prison, but claiming to
24 be a citizen of the United States is a claim of non-resident alien status that can lead to
penalties for a frivolous tax return of US Tax Court petition, and you may go to prison;
you are a citizen of the United States."

25 4.4 Two provisions of 26 USC and 26 CFR define cost which, in turn, therefore define
26 profit or *income*. (See 26 USC §§ 83(a), 1012; 26 CFR 1.83-3(g), 1.1012-1(a)). In a US Tax
27 Court decision, *Talmage v. Commissioner*, which was affirmed by the 4th Circuit Court of
28 Appeals, the Defendants articulated the foundation for a refusal to consider the Plaintiffs' most

1 sacred property, their labor, to be a cost, the value of such being rightfully excluded from
2 consideration in relation to the property those provisions allow to be so considered. (See OP1 at
3 pp.228 at ¶ 2.59). When one petitions for a determination under 26 USC § 83 which does not
4 relate to the standard compensation for personal services but concerns deferred compensation
5 and stock plans used to compensate employees, the courts are all ears and are eager to discuss
6 and interpret the governing statutory and regulatory language of and under § 83. HOWEVER,
7 when asked to do so in relation to standard fees, wages, salaries, commissions, or tips, paid
8 without restriction(s), the courts impose penalties and dispense diatribe and pejoratives by the
9 yard while they refuse to “say what the law is.” (See OP1 at pp.219 at ¶ 2.45 in *Werner* case to
10 p.221 at ¶ 2.46). Compare *Strom v. US*, 641 F. 3d 1051 (CA9 2011) (full indulgence of 26 CFR
1.83 regulations) to *Baker v. CIR*, 70 T.C.M. 1018 (1995) (T.C. Memo. 1995-495) *to wit*:

11 “The second amended petition filed in this case does not satisfy the requirements of
12 Rule 34(b)(4) and (5). There is neither assignment of error nor allegation of fact in
13 support of any justiciable claim. *Rather, there is nothing but tax protester rhetoric and*
14 *legalistic gibberish, as demonstrated by the allegations previously quoted.* See *Abrams*
15 *v. Commissioner* [Dec. 41,031], 82 T.C. 403 (1984); *Rowlee v. Commissioner* [Dec.
40,228], 80 T.C. 1111 (1983); *McCoy v. Commissioner* [Dec. 37,967], 76 T.C. 1027
(1981), affd. [83-1 USTC ¶ 9152] 696 F.2d 1234 (9th Cir. 1983).

16 The Court's order dated July 19, 1995, provided petitioner with an opportunity to assign
17 error and allege specific facts concerning her liability for the taxable years in issue.
18 *Unfortunately, petitioner failed to properly respond to the Court's order. Rather,*
19 *petitioner elected to continue to proceed with time-worn tax protester rhetoric.* See
20 *Abrams v. Commissioner, supra; Rowlee v. Commissioner, supra; McCoy 1021*1021 v.*
Commissioner, supra; Karlin v. Commissioner [Dec. 46,877(M)], T.C. Memo. 1990-
496.

21 *We see no need to catalog petitioner's arguments and painstakingly address them.* As
22 the Court of Appeals for the Fifth Circuit has remarked: “*We perceive no need to refute*
23 *these arguments with somber reasoning and copious citation of precedent; to do so*
24 *might suggest that these arguments have some colorable merit.*” *Crain v.*
25 *Commissioner* [84-2 USTC ¶ 9721], 737 F.2d 1417, 1417 (5th Cir. 1984). Suffice it to
say that petitioner is not exempt from Federal income tax or from the imposition of
appropriate additions to tax, *Olsen v. Commissioner* [Dec. 50,924(M)], T.C. Memo.
1995-471; see *Abrams v. Commissioner, supra* at 406-407.”

26 4.5 This is the judicial rhetoric and defamation resorted to when avoidance of statutory
27 interpretation is necessitated by the arguments of mere lowly Americans. Nowhere in *Baker*, or
28 in any other case, has there been any attempt whatsoever to disprove Baker's claims under 26

1 USC §§ 83, 1001, 1011, and 1012 by probing the language of the statute and the implementing
2 regulations as briefed in OP1.

3 4.6 Cost is determined by 26 USC §§ 83 and 1012, and by 26 CFR 1.83-3(g) (“the value
4 of any money or property paid”) and by 1.1012-1(a) (“cash or other property”), neither of
5 which make an exception for property within which one has no basis being considered as a
6 cost. The exception expressed in *Talmage* is arbitrary and is therefore impermissible. Why is
this simple statutory challenge strictly off limits?

7

8 **V. CONCLUSION & VERIFICATION.**

9 5.1 Courts of the United States have shown themselves unwilling to grant access to the
10 law in cases concerning these specific provisions of 26 USC. The willingness to prosecute and
11 imprison Americans lies in diametric opposition to the concept of government deriving its
12 authority through the consent of the governed. Indeed, observe how Defendants reply to this
13 action, note how far from proper statutory interpretation they stray, if any interpretation is
14 offered at all. For those with oaths to uphold the Constitution to stand idly by, or to act to
15 perpetuate a denial of proof that the law operates as the Defendants allege, is to impose a
16 condition of servitude to the executive branch under terroristic threats of imprisonment nobody
can prove to be lawful.

17 5.2 Plaintiffs make this good faith effort to solve precisely this dilemma which offends
18 the most basic of due process protections, and they have relied solely upon relevant statutes to
19 do so. “[I]t [is] the judiciary’s duty “to say what the law is.” *Marbury v. Madison*, 1 Cranch.
20 137, 177 (1803) (Marshal, C.J.).”¹ Thus, the initial inquiry is whether Congress intended to
21 subject the Plaintiffs to the 26 USC income taxes. (See *Bowen v. Georgetown Univ. Hosp.*, 488
22 U.S. 204, 208 (1988) (stating that “[i]t is axiomatic that an administrative agency’s power to
23 promulgate legislative regulations is *limited to the authority delegated by Congress*”); *INS v. Chadha*, 462 U.S. 919, 953 n.16, 955 n.19 (1983) (providing that agency action “is always
24 subject to check by the terms of the legislation that authorized it; and if that authority is
25 exceeded it is open to judicial review” and “Congress ultimately controls administrative
26 agencies in the legislation that creates them”)).

27

28 ¹ See *U.S. v. Lopez*, 514 U.S. 549, 115 S.Ct. 1624, 1633 (1995).

1 5.3 The Defendants will cite a plethora of reasons why the Plaintiffs should not or may
2 not access the law, so the most the Plaintiffs may derive from having pursued answers this way
3 will be evidence for a criminal trial jury at some future juncture when they seek to prove a lack
4 of willfulness. Their lives will be destroyed, their reputations, their estates and personal
5 relationships of every kind, and their futures, all will be devastated by public servants who
6 actually argue in favor of protection against having to prove their conduct to be lawful and a
matter of official right.

7 5.4 It is not Plaintiffs' fault that 26 CFR 1.1-1 is cited as authority to tax the income of
8 "citizens of the United States" and that 26 USC § 1 makes no such reference. It is not
9 Plaintiffs' fault that circuit courts, US Tax Court, and the IRS hold 26 USC § 83 applicable to
10 all compensation for services. Consider that the Defendants, all federal public servants, have to
11 comply with § 83 when they set about filing tax returns, and compare that to their refusal to
12 speak of the statute, of how its regulations operate, or of what it means, and refuse to even train
13 IRS employees on how to apply it or enforce it. Where can Americans hide from the likes of
14 their public servants? Who but the criminally insane could seek to justify or support such a
15 tenet of governance? "Left unchallenged they would prey upon the powerless; and we must not
16 permit that to happen again." (President W.J. Clinton, Holocaust Memorial Museum
commemoration ceremony, April 22, 1993).

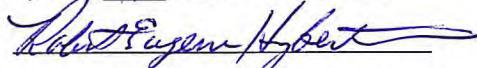
17
18 I agree with the Court that the Internal Revenue Code provision and the
19 corresponding Treasury Regulations that control consolidated filings are best
20 interpreted as requiring a single-entity approach in calculating product liability loss. I
21 write separately, however, because *I respectfully disagree with the dissent's suggestion*
22 *that, when a provision of the Code and the corresponding regulations are ambiguous,*
23 *this Court should defer to the Government's interpretation.* See *post* this page
24 (opinion of Stevens, J.). *At a bare minimum, in cases such as this one, in which the*
25 *complex statutory and regulatory scheme lends itself to any number of*
26 *interpretations, we should be inclined to rely on the traditional canon that construes*
27 *revenue-raising laws against their drafter.* See *Leavell v. Blades*, 237 Mo. 695, 700-
28 701, 141 S.W. 893, 894 (1911) ("When the tax gatherer puts his finger on the citizen,
he must also put his finger on the law permitting it"); *United States v. Merriam*, 263
U.S. 179, 188 (1923) ("*If the words are doubtful, the doubt must be resolved against*
the *Government and in favor of the taxpayer*"); *Bowers v. New York & Albany*
Lighterage Co., 273 U.S. 346, 350 (1927) ("*The provision is part of a taxing statute;*
and such laws are to be interpreted liberally in favor of the taxpayers"). Accord,
American Net & Twine Co. v. Worthington, 141 U.S. 468, 474 (1891); *Benziger v.*
United States, 192 U.S. 38, 55 (1904)."

1
2 See *United Dominion Industries, Inc. v. United States*, 532 US 822 (2001), J. Thomas
concurring.

3 5.5 While the Defendants will again fail to answer this call to due process, notions such
4 as this (above) will remain irrelevant to the redress sought through this action. The Plaintiffs
5 must live on under threat while the operation of the law remains a secret.

6 **Verification:**

7 5.6 I, Robert Eugene Hybertson, do hereby declare that the foregoing statements are
8 true and correct, and that the exhibits attached hereto are authentic and have not been
9 misrepresented in any way, to the best of my knowledge and belief. Executed under penalties
10 of perjury this 19th day of May, 2015.



12 Robert Eugene Hybertson, Affiant

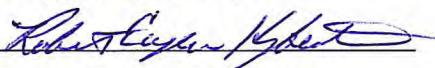
13 5.7 The above affirmation was subscribed and duly sworn to before me this 19th day of
14 May, 2015, by Robert Eugene Hybertson.

15 5.8 I, Cory D Carter, am a Notary under license from the State of
16 South Dakota whose commission expires on My Commission Expires and be it known by my
hand and my Seal as follows:



18 Notary signature

19
20 Respectfully submitted:



21 Robert Eugene Hybertson

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